



April 5, 1984

William D. Smith
San Diego County Counsel's Office
355 County Administration Center
1600 Pacific Highway
San Diego, CA 92101

Re: Advice Letter No. A-84-076

Dear Mr. Smith:

This letter is to clarify my oral advice to you on March 22, 1984. Your question concerned the Fair Political Practices Commission's Nord Opinion, No. 83-004, Oct. 4, 1983.

FACTS

A business entity is owned by two general partners, each of whom share control of the business. Partner #1 is the husband of a San Diego Planning Commissioner, Betsy Schreiber. Partner #2 owns, in addition to his interest in the partnership, 100% of a planning consultant business which represents clients before the Planning Commission.

QUESTION PRESENTED

How does the Commission's Nord Opinion, No. 83-004, Oct. 4, 1983 (copy enclosed), apply to this situation?

CONCLUSION

Under the Nord Opinion, Commissioner Schreiber must disqualify herself from any decisions which will foreseeably have a material financial effect on the partnership, Partner #2, or the consulting business.

DISCUSSION

As you are aware, Government Code Section 87100^{1/} prohibits a public official from making, or participating in the making, of a governmental decision^{2/} in which she knows or has reason to know that she has a financial interest. An official has a "financial interest" in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect^{3/} on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000)....

(Section 87103(a).)

Planning Commissioner Schreiber has an investment interest in the partnership worth over \$1,000.^{4/} Under the Nord Opinion, she also has an investment interest in Partner #2 because:

1. There are only two controlling general partners in the business;
2. There are not more than 35 total partners in the business; and
3. Commissioner Schreiber's investment interest in Partner #2 is worth \$1,000 more.

Commissioner Schreiber must disqualify herself from decisions which will foreseeably have a material financial

^{1/} Hereinafter all statutory references are to the Government Code unless otherwise indicated.

^{2/} For an explanation of the terms "making" and "participating," see the enclosed copy of 2 Cal. Adm. Code Section 18700. -

^{3/} For an explanation of the phrase "material financial effect," see the enclosed copy of 2 Cal. Adm. Code Section 18702.

^{4/} A public official has the same investment interests as her spouse. (Section 82034.)

William D. Smith
April 5, 1984
Page 3

effect on either the partnership, or Partner #2 as an individual. In addition, the consulting business which Partner #2 owns is considered to be "related" to the partnership.^{5/} Thus, Commissioner Schreiber must also disqualify herself from decisions materially affecting the consulting business.

During our conversation, we briefly discussed the types of decisions which may materially effect either Partner #2 or his consulting business. You stated that Partner #2 appears before the Planning Commission on behalf of clients and he is paid on an hourly, rather than contingent fee, basis. Thus, generally, the Planning Commission's decisions will not affect the amount of fees received by Partner #2 or his business. However, Commissioner Schreiber may be required to disqualify herself from a decision if it is one on which the outcome will determine whether Partner #2 or his business receives additional work on a project.

I hope that I have clarified this matter for you. If you have any additional questions, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:plh
Enclosures

^{5/} See the discussion of "otherwise related business entities" in the Nord Opinion.